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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,701	11/12/2003	Christine L. Knapp		5240
41131	7590	10/11/2007		
KENNETH EARL DARNELL 2010 WEST SEVENTH STREET COFFEYVILLE, KS 67337				
			EXAMINER HYUN, PAUL SANG HWA	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 10/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/705,701

Applicant(s)

KNAPP, CHRISTINE L.

Examiner

Paul S. Hyun

Art Unit

1797

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments with respect to the art rejections are not persuasive.

First, Applicant argues that Sweeny (US 4,528,226) does not disclose the act of subjecting a "percussive force" to an aromatherapeutic agent to release the aroma of the aromatherapeutic agent. This argument is not persuasive because Sweeny discloses the act of subjecting pressure or shear forces (e.g. scratching) to an aromatherapeutic agent to release its aroma. The Examiner maintains the position that the forces disclosed by Sweeny are within the scope of the claimed "percussive force".


Second, Applicant argues that Sweeny does not disclose the "emotionally driven" intent recited in the claims. This argument is not persuasive because intent does not further limit the claimed method. Nonetheless, even if the intent did further limit the claimed method, the act disclosed by Sweeny is emotionally driven. It is evident that the aromatherapeutic agent disposed on the scratch n' sniff sticker disclosed by Sweeny is intended to be released so that someone can discover the aroma. Therefore, a person that curiously scratches the scratch n' sniff sticker to discover the aroma of the sticker would be performing an emotionally driven act. Dictionary.com defines "curiosity" as "the DESIRE to learn". According to the definition, curiosity is an emotion.

Third, Applicant argues that Sitabkhan is not directed towards analogous art because the fragrances disclosed by the reference are not released by percussive forces. Rather, Applicant argues that the fragrances disclosed by Sitabkhan release on their own. This argument is not persuasive because Sitabkhan discloses that the fragrances are encapsulated, which are intended to rupture upon exposure to compression or shear forces (see [0025]).

Fourth, Applicant argues that the reference to Mookherjee et al. in the Office action was inappropriate because the fragrances disclosed by Mookherjee et al. are not released by a percussive force. This argument is not persuasive because the Mookherjee et al. reference was not relied upon for its disclosure of encapsulated fragrances. Rather, the reference was relied upon for the motivation of applying fragrances to a vehicle dashboard.

Applicant's argument with respect to the claim objection cited in the Office action is persuasive. Consequently, the objection has been withdrawn.

Applicant's argument with respect to the 35 U.S.C. section 112 rejections cited in the Office action has been considered but it is not persuasive. Applicant argues that since the dawn of time, projectiles have been thrown at targets, which provides the basis for an embodiment of the invention wherein both the projectile and the target comprise aromatherapeutic agents. The argument is not persuasive because the argument is irrelevant to aromatherapeutic agents.

  
Jill Warden  
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